

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH T. RUDITYS,

Complainant,

vs.

CITY OF MILWAUKEE and  
CHIEF JAMES R. MOHER,

Case XLV  
No. 10982, MP-28  
Decision No. 8420

Respondents.

Appearances:

Lawton and Cates, Attorneys at Law, by Mr. John A. Lawton,  
for the Complainant.  
Mr. John J. Fleming, City Attorney, and Mr. John F. Kitzke,  
Assistant City Attorney, for the Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on November 1 and 2, 1966, at the Milwaukee State Office Building, Milwaukee, Wisconsin, Howard S. Bellman, Examiner, being present; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That James T. Ruditys, hereinafter referred to as the Complainant, is an individual residing in Milwaukee, Wisconsin, and has been at all times material herein an employee of the City of Milwaukee, Fire Department, classified as a Fire Fighter, and is a member of the Milwaukee Fire Fighters' Association, Local 215, International Association of Fire Fighters, AFL-CIO.
2. That the City of Milwaukee, hereinafter referred to as the City, is a municipal employer duly incorporated under the laws of the State of Wisconsin.
3. That James R. Moher, hereinafter referred to as the Chief, is an individual residing in Milwaukee, Wisconsin, that he is the Chief Engineer of the Fire Department of the City, and as such is the agent and representative of the City with respect to the matters pertinent herein.

4. That Milwaukee Fire Fighters' Association, Local 215, International Association of Fire Fighters, AFL-CIO, hereinafter referred to as the Union, is a labor organization having offices in Milwaukee, Wisconsin, and at all times material herein has been the recognized bargaining representative of certain employees of the Fire Department of the City, including employees having the classification of Fire Fighter, who are under the supervision of the Chief.

5. That the Complainant served as a member of the Union's Executive Board from approximately January 1, 1964, to November 1, 1965; and since the latter date and at all times material herein, the Complainant has served as the Union's Recording Secretary; that during 1965 the Complainant also served as the Union's representative on the Fire Department's Personnel Committee; that in such positions the Complainant participated in conferences and negotiations with representatives of the Fire Department on questions of wages, hours and conditions of employment; and that at all times material herein the Chief had knowledge of Complainant's Union positions and activities.

6. That during February and March, 1965, the Complainant, in his Union capacity, represented Harold Swanto, an employee of the Fire Department, in various hearings and investigations, including a hearing before the Milwaukee Police and Fire Commission, relevant to the discharge of Swanto from the Fire Department; and that during the course of said hearings and investigations, the Complainant made certain threats and accusations, and engaged in certain conduct which provoked a degree of personal hostility on the part of the Chief toward the Complainant.

7. That at all times material herein, in accordance with Fire Department practices, employes thereof were permitted to exchange assigned work days and days off with one another, with approval; that such practice was permitted by the Chief, except where it interfered with the operation of the Department, such as in the case of a shortage of manpower; and that, however, on occasions such trading privileges have been denied to various employes of the Department as a form of discipline.

8. That on January 13, 1966, the Fire Department Board of Investigation conducted a hearing on charges, filed by Captain John Koren on January 10, 1966, preferred against the Complainant for an alleged violation of departmental rules in failing to report for a

funeral detail on January 8, 1966, that said Board of Investigation subsequently and prior to January 24, 1966, formally reported their determination to the Chief that Koren's charges and specifications with respect to the Complainant were not supported by the testimony adduced at the hearing, and further that the Complainant had made every effort to notify his superiors of his inability to attend to the funeral detail, that, however, on January 24, 1966, in accordance with departmental rules, the Complainant was brought to trial before the Chief on Koren's charges, and that after a brief hearing thereon the Chief made the following announcement:

"... I will support the charges made by the Captain and of disobeying a Rule and I'm going to exert a penalty and the penalty will be, that effective January 24, 1966, and continuing to and through December 31, 1966, you will be denied trading privileges except that any trade that is now incomplete, and recorded, will be completed. That if you have the misfortune of losing a relative, and you wish to go to a funeral, you will have permission to make a trade for that and if in the conduct of your union business it is necessary to make a trade, you will be permitted to do that. Also, that you will be deprived of the privilege of acting as Fire Lieutenant or as Motor Pump Operator and that you will not be used as a regular or relief driver for a Chief Officer but this is not precluding your detail to deliver and pick up a car used by a Chief Officer that does not ordinarily have a driver."

9. That the imposition of the above described penalty was not motivated by Complainant's Union activity nor did it result from any hostility by the Chief toward Union activity generally.

10. That on January 26, 1966, the Chief in writing advised the Union president that the Chief had cancelled the Complainant's appointment as the Union's representative on the Department's Personnel Committee and requested the Union president to submit the name of another Union member for consideration for appointment; that on February 1, 1966, the Union by letter advised the Chief that it desired that Complainant remain as its representative on the Personnel Committee; that on February 3, 1966, the Chief in writing again advised the Union that the Complainant could not serve as the representative of the Union on said Committee; that removal of the Complainant from the Personnel Committee was not motivated by Complainant's Union activity nor did it result from any hostility by the Chief toward Union activity generally.

11. That following the imposition of the discipline imposed on January 24, 1966, the Complainant was permitted to trade days off to conduct Union business during April, June, August and October, 1966, with the following exceptions: (a) the Chief, on February 23, 1966, refused to permit the Complainant to trade a day off in order to attend, as a representative of the Union, an institute conducted by the University of Wisconsin School for Workers scheduled for March 7, 1966, on the basis that "attendance in such institute is not within the provisions of the required Union activity as specified in the penalty . . ." and (b) the Chief, on November 1, 1966, further refused to permit the Complainant, as head of the State Fire Fighters Committee on Political Education, to fulfill a speaking engagement on November 2, 1967, because of "some conflict with department regulations concerning political activity" and because of the instant prohibited practice proceeding.

12. That the Chief, by removing the Complainant from the Department's Personnel Committee, by denying and refusing to permit the Complainant to attend the institute of the School of Workers and to fulfill his speaking engagement as the representative of the Committee on Political Education, attempted to and in fact did, spell out and limit the nature of Complainant's Union activities.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

1. That the City of Milwaukee, through its agent, James R. Moher, Chief Engineer of its Fire Department, and James R. Moher, as an individual, by removing Joseph T. Ruditys from the Fire Department's Personnel Committee, by failing and refusing to permit Joseph T. Ruditys to trade days off to attend the institute of the University of Wisconsin School for Workers and to fulfill a speaking engagement as a representative of the Committee on Political Education, and interfered, restrained and coerced Joseph T. Ruditys in the exercise of his rights set forth in Section 111.70(2), and thereby did engage in, and are engaging in, prohibited practices within the meaning of Section 111.70(3)(a) 1 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

### **ORDER**

IT IS ORDERED that the City of Milwaukee and James E. Maher  
their officers and agents, shall immediately

- Cease and desist from imposing disciplinary actions which provide in any manner that the City of Milwaukee or James R. Moher may or shall determine in which union activities Joseph T. Ruditys or any employees may or shall engage, or provide that the City of Milwaukee or James R. Moher may indicate approval or favor toward certain union activities and disapproval or disfavor toward other union activities of Joseph T. Ruditys or any employees.

2. Take the following affirmative action which the Commission finds will effectuate the policies of Section 111.70, Wisconsin Statutes:

  - (a) Immediately notify Joseph T. Ruditys and Milwaukee Fire Fighters Association, Local 215, International Association of Fire Fighters, AFL-CIO, in writing, that they withdraw their objection to Joseph T. Ruditys serving as the representative of said labor organization on the Fire Department's Personnel Committee.
  - (b) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days of the receipt of a copy of this Order of what steps it has taken to comply herewith.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 28<sup>th</sup>  
day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney, Chairman

S. RICE LIP Commissioner

William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSION OF LAW AND ORDER

The initial complaint in this case was filed on August 3, 1966. An amended complaint was filed on October 14, 1966, and hearings were held on November 1 and 2, 1966. Subsequent to the close of the hearing and issuance of the transcripts, the parties, pursuant to mutual agreement, were afforded an opportunity to submit briefs. The period for the filing of such briefs extended to October 25, 1967, pursuant to requests by Counsel for both parties who wished to await the determination of the Wisconsin Supreme Court in Muskego-Norway v. WERB (32 Wis. 2d 478).<sup>1/</sup>

Ruditys has been an employee of the Milwaukee Fire Department since October 19, 1959, and, at the time of the hearing, held the rank of Fire Fighter. The Union, has, during the entire period relevant herein, represented certain employees of the Department including those holding the rank of Fire Fighter. Ruditys served as a member of the Union's Executive Board from approximately January 1, 1964, to November [redacted] 1965, when he became the Union's Recording Secretary. He continued in that office throughout the period material herein.

James R. Moher, a Co-Respondent herein, has been, during the entire relevant period, the Chief of the Milwaukee Fire Department.

For many years the Fire Department has included among its "standing committees" a "Personnel Committee" composed of eight members headed by the Assistant Chief and including a representative named by the Union. The Committee's assignment includes review and appraisal of department policies and practices with respect to such

1/ Decided May 4, 1967.

matters as employee attitude and morale, the personnel rating system, employee benefits and classifications and salaries. During 1965, Ruditys served as the Union's representative on the Personnel Committee which met approximately four times. At those meetings the subjects discussed included vacations, days-off, personnel qualifications reports, uniforms, trade records, recall procedures, sick leave, work schedules, watch duty, "disparity", shifts, the reorganization of the department to a 56-hour week and various reporting procedures. The minutes of these meetings were submitted to the Chief as a regular procedure.

There were nine meetings between Chief Moher and the Union's Executive Board during the period when Ruditys served on the Board. At the four 1965 meetings the Board made certain demands, a most important one of which was that the Chief appear before the pertinent City authorities and attempt to eliminate or reduce the "disparity" between the salaries and benefits received by Police Department employees and Fire Department employees. The Chief refused to do so on the ground that he was a part of the management hierarchy and that, therefore, should not address management in behalf of employees. The Executive Board, including Ruditys, continued to make this demand however, and on one occasion apparently evoked a rather slight show of anger by the Chief.

Harold Swanto, an employee of the Fire Department, was discharged during 1965 because of alleged violations of Fire Department rules concerning residence. During the development of the Swanto case, investigatory hearings and trials were held on February 9, 1965, February 11, 1965, March 3, 1965, and March 5, 1965. At all of these proceedings Ruditys appeared in behalf of Swanto, and the Chief either made an appearance at, or read the transcript of, each proceeding. The Chief also knew that Ruditys participated in an appeal by Swanto of his discharge to the Police and Fire Commission and in an attempt by Swanto to receive unemployment compensation.

According to his testimony Ruditys met alone with the Chief in the latter's office during the period of Swanto's investigations and trials and requested the Chief to drop the matter. Ruditys accused the Chief of being a "puppet" and performing improperly and threatened to publicly expose a certain transaction entered by the Department which Ruditys believed would be very embarrassing to the Department and the Chief. Ruditys also recalls that at one of the Swanto trials the Chief looked "very disgusted" at him and, after the hearing, would not shake Ruditys' hand.

Also during the period of the Swanto hearings, Ruditys objected to Assistant Chief Richard Donovan that the case should be before the Police and Fire Commission. Ruditys stated that he would call the City Attorney's office with regard to his objection and Donovan replied that Ruditys could not make such a call. However, Ruditys asserted that he was a Union representative and would make the call, which he did.

On November 1, 1965, Ruditys was appointed to serve during the remainder of the year as the Union's Recording Secretary. The appointment was necessary because the office had become vacant. In December, 1965, Ruditys was elected Recording Secretary for 1966. The responsibilities of that post are to attend the Union's meetings and to keep its minutes and records. As Recording Secretary, Ruditys could not, and did no longer, serve on the Executive Board.

On January 10, 1966, Captain John Koren preferred charges against Ruditys for alleged violations of certain Departmental rules. The alleged violations were based upon Ruditys' failure to report for a funeral detail on January 8, 1966, as ordered by Captain Koren on January 6, 1966. Instead of reporting for the detail, Ruditys met with another Union official to exchange certain Union records.

On January 13, 1966, a Board of Investigation hearing was convened with regard to such charges. After the 30 minute hearing, and on the same day, the Board, which included a Deputy Chief and four Fire Fighters, formally reported to the Chief that "the charges and specifications were not supported by the testimony" and that "Ruditys made every effort to notify his superiors that he would not be able to attend to the funeral detail, both on the day that he was assigned to the detail and on the following day".

Nonetheless, on January 24, 1966, Ruditys was brought to trial before the Chief on the above charges. After a brief hearing and before Ruditys' representative, Fire Fighter Robert Engel, the Union's President at that time, could make a statement, the Chief announced his decision as reflected in paragraph 8 of the Findings of Fact.

The "trading" referred to in the penalty imposed upon Ruditys concerns the practice of the employees of the Department whereby they may, according to certain procedures and with certain limitations, exchange assigned work days and days off with one another. According to the Chief's testimony, as a general rule, it is not required that

a reason be stated or approved for a trade to be sanctioned and there is no established basis for denial of trades, except interference with the operation of the Department, as when there is a manpower shortage. However, denial of such trading privileges has been used as a disciplinary measure in the past.

The transcripts of Ruditys' hearings<sup>2</sup> and the relevant testimony at the hearing in the present matter disclose that the facts surrounding Ruditys' absence from the funeral detail and his efforts to secure permission to be absent were never fully determined. It is also apparent that the Fire Department's procedures for securing such permission were not clearly defined. However, inasmuch as the penalty levied against Ruditys is not found in itself to be a prohibited practice (although certain subsequent applications of the penalty are) it is not necessary to more precisely determine such facts and procedures here.

On January 26, 1966, two days subsequent to the Chief's finding Ruditys guilty as charged and announcing the penalty levied, the Chief wrote the Union that "The appointment of Fire Fighter Joseph Ruditys as a member of the department's Personnel Committee is herewith cancelled. If your organization should wish to have a representative on this Committee, please submit the name of another member for consideration for appointment". The Union responded by a letter to the Chief dated February 1, 1966, that it wished "to have our representative remain on your Personnel Committee". The Chief replied by letter dated February 3, 1966:

"Note that the word 'cancelled' is used with reference to the appointment of Joseph Ruditys."

Note that I asked you to 'submit the name of another member for consideration for appointment'. I used the word 'another' to make it specific that someone other than Joseph Ruditys would be considered."

Ruditys on February 11, 1966, requested permission to make a trade of an assigned day on March 7, 1966, so that he could attend a session of the University of Wisconsin School for Workers as a representative of the Union. The Union, by a letter dated February 14, 1966, informed the Chief that Ruditys was a delegate of the Union to

2/ , Made a part of the record herein.

conventions of the Wisconsin State Fire Fighters, the International Association of Fire Fighters and the Wisconsin State AFL-CIO, in June, August and October, 1966, respectively and that Ruditys was chosen to attend the School for Workers session in March.

Chief Maher replied by a letter dated February 23, 1966, that Ruditys could trade in order to attend the specified conventions as well as "a regular or special meeting of the Milwaukee County Labor Council" in that trades for such purposes were "compatible with the penalty imposed . . . on January 24, 1966". However, permission to trade to attend the School for Workers institute was denied on the basis that "attendance at such institute is not within the provisions of required union activity as specified in the penalty . . . The Chief's letter ended by stating "This communication also serves notice that the intercession of any person or group for the purpose of revising or nullifying this decision will not be recognized by this office".

By a letter dated November 1, 1966, (the first day of the hearing in the instant matter) the Chief announced that a request by Ruditys to make a trade so that he could fulfill a speaking engagement "in his capacity as head of the State Fire Fighters Committee on Political Education" (C.O.P.E.) was denied because of (1) "some conflict with department regulations concerning political activity" and (2) the present proceeding before the Commission with respect to Ruditys' trading privileges.

The evidence is that, in fact, Ruditys was allowed to make trades in order to engage in Union business in April, June, August and October and that he was denied that privilege on the two occasions described above.

Ruditys draws attention to the various "confrontations" between the Chief and himself during the year that preceded the disciplinary action. These included face-to-face meetings, as well as statements made and positions taken by Ruditys which reached the Chief's attention. Emphasis is placed, by Ruditys, on apparent manifestations of hostility by the Chief when discussing the disparity issue and when he failed to shake hands with Ruditys. However, Ruditys also admits, in his brief, that his conduct at the Swanto Hearings, the transcripts of which are in the present record, "should be sufficient to satisfy the Board that any normal person in authority would react in anger and frustration". The brief adds that "Ruditys

was aggressive, and, in terms of his own self-interest, he was admittedly not discreet. In other words, there was sufficient motive for retribution by the Chief. We must agree with these assertions, particularly with respect to Ruditys' conduct at his conference with the Chief in regard to the Swanto case.

Ruditys argues, however, that the January 24, 1966, disciplinary action had as its purpose "to discourage Ruditys from future aggressive behavior as a union representative". In support of this contention is directed to conduct prior to and during Ruditys' trial before the Chief, as well as to the events that took place subsequent to said trial.

According to Ruditys, the Chief, in view of the recommendation by the Board of Investigation, which included a Deputy Chief, that the charges against Ruditys be dismissed, and the ambiguity with respect to the rules and procedures which Ruditys was accused of violating, as well as certain confusion as to what actually transpired on the days in question, should have clarified the procedures for future cases and merely warned Ruditys re future conduct. The transcripts of said hearings, which are also part of the record herein, do in fact indicate that such ambiguities and confusion did exist. The fact that the Chief imposed a penalty notwithstanding such factors and before allowing the Union's President to speak is sufficient, Ruditys contends, to support an inference that the Chief wished to inhibit Ruditys' union activities.

Next it is urged by Ruditys that his theory as to the Chief's motive is further supported by the events that followed the announcement of the penalty. These were the removal of Ruditys from the Personnel Committee and the Chief's refusals to allow him to trade to attend the School for Workers program and the C.O.P.M. meeting. Note is made of the Chief's rather hostile response to the Union's request that Ruditys remain on the Personnel Committee and the Chief's statement re the School for Workers episode that no "intercession" would be recognized.

Based upon the foregoing, Ruditys reasons, it must be concluded that the "underlying factor" in the actions taken by the Chief against Ruditys was the latter's Union activities, and therefore such actions constituted interference and discrimination within the meaning of Section 111.70(3)(a) 1 and 2, Wisconsin Statutes.

DISCUSSION

It is our conclusion that the penalty imposed by the Chief on January 24, 1966, did not constitute any prohibited practice, however the implementation of such penalty with respect to the Personnel Committee, the School for Workers and the Committee on Political Education was prohibited interference.

The record fails to disclose that the Chief's actions toward Ruditys were grounded upon hostility toward Ruditys having engaged in protected concerted activities or upon hostility toward union activities in general. It is fundamental that the element of anti-union animus must be found to support a conclusion of unlawful discrimination within the meaning of Section 111.70(3)(a) 1. Rather, the record indicates that the Chief and the City have a history of proper dealings with the Union. The history of the relationship between the Fire Department and the Union is long, and there is no evidence in this record of any hostility outside of the Ruditys case. The Personnel Committee, in fact, is a creature of the Department which indicates a willingness to accomodate and receive the positions of the Union on many vital issues.

On the other hand, there are in the record indications that Ruditys evoked personal hostility toward himself from the Chief. Admitting that Ruditys was aggressive is to underestimate the fact, particularly when his conduct on the several occasions mentioned is viewed, as it must realistically be, in the quasi-military context of the Fire Department and its traditional superior officer-subordinate relations. Therefore, while we might agree ~~arguendo~~ with the Complainant that the disciplinary action of January 24, 1966, appears to be overly harsh in the light of the record made in the hearings which preceded it, we do not construe the hostility which may have dictated such harsh terms as anti-union hostility, but rather personal hostility toward Ruditys. Furthermore, this conclusion is reached without compromising the principle which this Commission has enunciated, that a disciplinary action is unlawfully discriminatory when it is even partly motivated by anti-union animus. 3/

However, a conclusion that a prohibited practice within the meaning of Section 111.70(3)(a) 1 has been committed does not require

1/ Muskego-Norway vs. WERB, 1966.

nothing of such hostility, but rather may be grounded on individual choices which are likely to interfere with employees' rights to engage in or refrain from the activities as set forth in Section 111.70(2). It is our conclusion that such interference occurred when the City and the Chief removed Ruditys from the Personnel Committee and refused to permit Ruditys to trade so that he could attend the School for Workers and C.O.P.E. sessions.

While the Personnel Committee was created by the Department, it apparently became an accepted tradition that one of its members could be named by the Union, and that the Union could, through such representation, reflect its positions and enter discussions of issues essential to its interests. By acting so as to indicate that such representation required that the Union member on the Committee maintain the support or good graces of the Chief, a substantial inhibiting factor was injected into this established Union activity.

The penalty levied against Ruditys on January 24, 1966, expressly exempted from the general ban on trading those trades necessary for the conduct of "union business", and Ruditys did, in fact, make several trades for that purpose after the penalty was imposed. These facts are construed as further support for the conclusions that the penalty was not an act of prohibited discrimination and that the Chief was not motivated by anti-union hostility. However, it is also concluded that by picking and choosing among such activities unlawful interference was committed. We find that attending educational programs afforded to employees by the University of Wisconsin's School for Workers, and participating in the political activities of C.O.P.E. are lawful concerted activities protected by Section 111.70(2). The School for Workers' programs are intended to train employees to meet the responsibilities of union leadership. The importance of political activity to the success of unions that represent municipal employees is obvious. Therefore, the City and its agent, the Chief, took the role of determining which union activities were allowable and which were not. Of course, such a role interferes with the rights guaranteed to employees by Section 111.70(2) to engage in or refrain from any or all such activities according to their own free choices.

The Respondent's brief contends that certain statutes (Section 25, Chapter 586, Laws of 1911 and Section 13, Chapter 586, Laws of 1911, as amended by Chapter 458, Laws of 1951) which authorize

"to change or regulate their departments and the members thereof  
to withhold, discharge and suspend such members," have not been  
repealed by Section 111.70, Wisconsin Statutes, and that Section  
of the Statute can come into play in terms of a prohibited practice  
only when it is proven that one of the rights created under Section  
111.70(2) has been expressly violated". We agree that the Statutes  
cited have not been repealed by Section 111.70; however, we also  
understand that as a subsequent enactment, Section 111.70 mitigates  
the Chief's authority to act in derogation of the employe rights  
provided therein.<sup>1/</sup> Furthermore, we are satisfied that Rudity's  
has met the burden of proof with respect to the acts of unlawful  
interference discussed above.

Dated at Madison, Wisconsin, this 28<sup>th</sup> day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
J. S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

Muskego-Norway vs. WERB, Supra.